

# In the United States Court of Federal Claims

Case No. 04-1845C  
(Filed: August 20, 2007)  
**NOT TO BE PUBLISHED**

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DEBBIE J. DUNCAN,	*
Plaintiff, pro se,	*
	*
v.	*
	*
THE UNITED STATES OF AMERICA,	*
Defendant.	*
	*

\* \* \* \* \*

**Debbie J. Duncan**, Plaintiff, *pro se*.

**Douglas Mickle**, Civil Division, Department of Justice, Washington, D.C,  
attorney of record for Defendant.

**Arielle Cohen**, Law Clerk.

## **OPINION AND ORDER**

**BASKIR**, Judge

The Plaintiff, Ms. Debbie J. Duncan brought this case alleging discrimination and wrongful termination of her employment by the Department of Housing and Urban Development ("HUD"). According to Ms. Duncan, the Government, through HUD, violated applicable constitutional, statutory, and regulatory provisions by creating a hostile work environment, denying the Plaintiff procedural due process, and retaliating against the Plaintiff in her workplace. The Plaintiff seeks reinstatement to her former job as executive director of the Housing Authority of the City of Eutaw (HACE), back payment of salary and interest, sick and annual leave, and \$1.6 million in damages.

The Defendant has moved to dismiss the Plaintiff's claims for lack of jurisdiction pursuant to Rule 12(b)(1) of the Rules of the United States Court of Federal Claims ("RCFC"). We agree that this Court lacks jurisdiction over the Plaintiff's claims for two essential reasons. First, the various laws under which the Plaintiff claims to be entitled to relief do not provide a basis for this Court to exercise jurisdiction. Second, the Plaintiff is mistaken in her understanding that she was employed by HUD. Any claims

which the Plaintiff might have regarding the termination of her employment relate to the conduct of HACE, which is a state, not Federal agency. **Accordingly, we GRANT the Government's motion to dismiss. The Plaintiff's motion for summary judgment is DENIED.**

I. Background

A. Facts

In evaluating a motion to dismiss, the Court takes all allegations contained within the Plaintiff's pleadings as true and construes them in a light most favorable to the Plaintiff. *Cedars-Sinai Medical Ctr. v. Watkins*, 11 F.3d 1573 (Fed. Cir. 1993) (citing *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974)). The Court understands the facts presented by the Plaintiff to be as follows:

The Plaintiff was hired as the executive director of the Housing Authority of the City of Eutaw ("HACE") in May of 2002. Compl. ¶ 4; Motion to Amend Compl. at Ex. 11. The Plaintiff implies that she was hired to correct several years of poor management at HACE. Compl. at Attach. 2 and 5; Motion to Amend Compl. at Ex. 2.

During the Plaintiff's less than two-year employment with HACE, she had numerous ongoing disagreements with its Board of Commissioners. The Board memorialized these disagreements in at least three "write-ups." *Id.* at 3-6. The first two "write-ups" identified in the record involved the Plaintiff's decision to hire temporary maintenance personnel. The third dispute, more serious in nature, apparently arose out of the Plaintiff's "insubordinate" or "disrespectful" response to the board's September 2003 refusal of the Plaintiff's request for financial assistance after her car was vandalized. *Id.* at Ex. 9. According to the record, this vandalism may have been related to the disapproval of and hostility aimed at the Plaintiff's administration of the housing program. *Id.* This third dispute resulted in the Plaintiff's five-day suspension from work. *Id.*

On January 27, 2004, there was another dispute during a board meeting and the Plaintiff was terminated for misconduct. *Id.* at Ex. 2. The Plaintiff subsequently requested and was denied unemployment benefits. *Id.* During the unemployment compensation appeal hearing Board Chairman Jimmy Hardy and the Plaintiff gave very different accounts of the events leading up to the Plaintiff's termination. *Id.* Although the exact outcome of the hearing is not clear from the record, we assume from the Plaintiff's presence in this Court that the hearing results did not favor the Plaintiff.

On January 30, 2004, the Plaintiff sent a letter to the Alabama HUD office alleging that HACE had fired her for discriminatory reasons. Alabama HUD's Director responded that HUD was neither authorized to nor responsible for investigating the alleged employment discrimination and advised the Plaintiff to contact the Equal

Employment Opportunity Commission (“EEOC”). Motion to Amend Compl at Ex. 1. The Plaintiff did contact the EEOC. However, it dismissed her charge because “[t]he Respondent employs less than the required number of employees or is otherwise not covered by the statutes.” Compl. at Attach. 1.

## B. Procedural History

On December 29, 2004, the Plaintiff, filed a *pro se* Complaint in the U.S. Court of Federal Claims, together with a motion for leave to proceed in forma pauperis. The Complaint alleged, among other things, that HUD and HACE, as agents of the United States Government, wrongfully suspended and terminated the Plaintiff from her position as executive director of the Eutaw Housing Authority without affording the Plaintiff opportunity to refute the charges laid against her.

The Plaintiff’s initial Complaint asserted that this Court has jurisdiction to entertain her claims under 28 U.S.C. § 1491 (the Tucker Act) and 28 U.S.C. § 1346 (the Little Tucker Act). On November 3, 2005, the Plaintiff filed a motion seeking leave to amend her complaint. In her Amended Complaint, the Plaintiff indicated that the following statutes also provide for this Court’s jurisdiction over her claims: 28 U.S.C. § 2671 *et. seq.* (The Federal Tort Claims Act); 5 C.F.R. § 7501 (ethical regulations concerning the conduct of HUD personnel); and 42 U.S.C. § 1985 *et. seq.* Finally, in her Second Amended Complaint, the Plaintiff cited the Fifth and Fourteenth Amendments to the Constitution as sources of Court of Federal Claims jurisdiction.

On November 14, 2006, the Defendant filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction. The Plaintiff was granted an extended response deadline and on February 9, 2007, filed a document captioned “Motion for Summary Judgement [sic].” Shortly thereafter, on February 15, 2007, the Defendant filed its response to the Plaintiff’s Motion for Summary Judgment. The Plaintiff did not file a final reply.

## II. Discussion

The jurisdiction of the Court of Federal Claims is conferred by the terms of the Tucker Act:

The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim **against the United States** founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or **for liquidated or unliquidated damages in cases not sounding in tort.**

28 U.S.C. § 1491(a)(a) (emphasis added). Accordingly, all claims brought before the Court of Federal Claims must strictly satisfy the elements of the Tucker Act and

precisely articulate a money-mandating provision of the constitution, federal statute, or the Tucker Act that gives this the Court jurisdiction. *Livengood v. United States*, 49 Fed. Cl. 413 (2001); *Shelleman v. United States*, 9 Cl. Ct. 452 (1986). If claims fail to satisfy these elements, this Court lacks subject matter jurisdiction and must grant a Motion to Dismiss. RCFC 12(b)(1).

In non-legalistic terms, in order to establish jurisdiction in the U.S. Court of Federal Claims, a plaintiff must demonstrate that her situation is one in which the United States (and not some other entity) might owe her money. None of the sources of law cited by the Plaintiff succeed in conferring jurisdiction on this Court.

The Federal Tort Claims Act cannot be a basis for jurisdiction. *Seay v. United States*, 61 Fed. Cl. 32, 36 (2004); nor can tort-based discrimination and wrongful termination claims, because the Tucker Act explicitly excludes actions sounding in tort.

This Court lacks jurisdiction over the Plaintiff's Fifth and Fourteenth Amendment due process claims since neither due process clause in question requires the Federal Government to pay money damages for violation of their respective constitutional amendments. See *LeBlanc v. United States*, 50 F.3d 1025, 1028 (Fed. Cir. 1995).

The various provisions cited by the Plaintiff relating to settlement and judgment (such as 31 U.S.C. §§ 1304 and 3702 and 28 U.S.C. § 2517) are only applicable *after* there has been a judgment or a settlement agreement establishing a plaintiff's right to payment – in and of themselves, they do not create substantive rights to payment.

Tucker Act jurisdiction requires an independent waiver of the United States Sovereign Immunity from suit. *United States v. Mitchell*, 445 U.S. 206, 538 (1983). A state cannot waive the immunity of the United States. Thus, Alabama state law cannot be a source of this Court's jurisdiction.

The Plaintiff cites miscellaneous other legal authorities. However, none can support jurisdiction in this Court. We wish to emphasize that there is no secret formula for asserting the jurisdiction of this Court – there is not some statute unknown to the Plaintiff that would confer jurisdiction on this Court, if only she could find it. Given the facts as the Plaintiff has alleged them, there simply is not a relationship between the Plaintiff and the United States which would give the Plaintiff a right to damages.

The Plaintiff names the United States as the sole defendant in her Amended Complaint. However, the Plaintiff was employed by HACE, not the federal government, and it was HACE which allegedly wrongfully terminated and suspended her. HACE is a local, independent Public Housing Agency ("PHA") formed under the authority of the Housing Authorities Law Of Alabama. Ala. Code 1975, §24-1-20 et. Seq. The record indicates that HACE receives grant funding from the Federal Department of Housing

and Urban Development (“HUD”) and that to continue receiving such funds HACE must meet various contractual and monitoring requirements. Def. June 8, 2005 Motion for Leave to File Motion to Dismiss at 7; Compl. at Attach, 2.

The fact that HACE receives grants from and complies with monitoring and contractual requirements of a federal agency—HUD—does not make HACE an agency, agent or a contract employee of the federal government. See *Blaze Const. v. United States*, 27 Fed. Cl. 646, 652 (1993) (holding that it is “well settled that a local authority does not become an agent of the federal government due to a federal agency’s control and supervision of grant funds.”); see also *Housing Corp. Of America v. United States*, 468 F.2d 922, 924, 199 Ct. Cl. 705 (1972); *Malone v. United States*, 34 Fed. Cl. 257, 261 (1995). The Plaintiff was not employed by the Federal Government or any of its agencies, and was fired without the involvement of HUD or any other Federal Government entity. The Plaintiff names the wrong defendant.

### III. Transfer

Ms. Duncan requested that we transfer her case to a United States District Court if we found this Court lacked jurisdiction. However, in order to justify transfer, a plaintiff “must make a showing that there is probable jurisdiction in the district court.” *Sanders v. United States*, 34 Fed. Cl. 75, 81 (1995), *aff’d*, 104 F.3d 376 (Fed. Cir. 1996) (table), *cert. denied*, 522 U.S. 831 (1997). While a district court might be more likely to have jurisdiction over the *types* of claims that Ms. Duncan makes, there is still the obstacle that Ms. Duncan’s claims are not properly against the United States. The removal of the United States as a Defendant would leave no case to transfer. Therefore, **we decline to transfer the case.**

### IV. Conclusion

The Court lacks subject matter jurisdiction over Plaintiff’s claims. **Accordingly, the Court hereby GRANTS the Government’s Motion to Dismiss. The Plaintiff’s Motion for Summary Judgment is DENIED.** The Clerk of the Court is directed to dismiss Plaintiff’s amended complaint without prejudice. No costs.

**IT IS SO ORDERED.**

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LAWRENCE M. BASKIR  
Judge